

REMARKS

Claims 1-15 are pending in the subject application. In the amendments above, applicants have canceled claims 1-15 and added new claims 16-21 to better describe applicants' invention. No issue of new matter is raised by these new claims. Accordingly, applicants respectfully request that the Examiner enter and consider new claims 16-21.

Rejection Under 35 U.S.C. 112, First Paragraph

The Examiner rejected claims 1-15 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement for reciting the term "lotus extract" which is not sufficiently described according to the Examiner.

In response, applicants respectfully traverse the Examiner's ground of rejection. However, applicants note that claims 1-15 have been canceled and that new claims 16-21 recite "a lotus extract powder prepared by adding water to slices of lotus root, boiling the slices of lotus root and water to produce a boiled product of the slices of lotus root and water, filtrating the boiled product to produce a filtrate, and freeze-dried the filtrate." Accordingly, since the lotus extract powder as now claimed is clearly described in the present specification, persons skilled in the art can prepare and use the agent, the food and the food additive of the present invention.

In view of the amendments and remarks above, applicants respectfully request that the Examiner withdraw the present rejection to claims 1-15 since it is moot in light of the cancelation of these claims and acknowledge that new claims 16-21 comply with the written description requirement.

Rejections Under 35 U.S.C. 102

The Examiner rejected claims 1-15 under 35 U.S.C. 102 as anticipated by either Nakamura et al. (WO 02/080946) or Kung-Ming (US 6,685,973).

In response, applicants note that claims 1-15 have been canceled thereby rendering moot the Examiner's grounds of rejection. Nevertheless, applicants address these rejections as if they were applied to new claims 16-21.

Nakamura describes compositions comprising lotus germ extract and lactic acid bacteria. However, Nakamura does not describe an agent comprising (1) a mixture of a lotus extract powder prepared by adding water to slices of lotus root, boiling the slices of lotus root and water to produce a boiled product of the slices of lotus root and water, filtrating the boiled product to produce a filtrate, and freeze-dried the filtrate; sporing lactic acid bacteria powder for food; and maltose starch syrup; or (2) a mixture of ground lotus; sporing lactic acid bacteria powder for food; and maltose starch syrup. That is, since the lotus germ extract described in Nakamura is **NOT** a lotus root, Nakamura does not teach the lotus extract powder. Further, Nakamura does not teach the mixture used in the present invention. In addition, Nakamura does not teach any effectiveness relating to treatment of allergy. Accordingly, Nakamura does not anticipate new claims 16-21.

Kung-Ming describes a composition comprising Glycine max (L.) extract and lactic acid bacteria. However, Kung-Ming does not describe an agent comprising (1) a mixture of a lotus extract powder prepared by adding water to slices of lotus root, boiling the slices of lotus root and water to produce a boiled product of the slices of lotus root and water, filtrating the boiled product to produce a filtrate, and freeze-dried the filtrate; sporing lactic acid bacteria powder for food; and maltose starch syrup; or (2) a mixture of ground lotus; sporing lactic acid bacteria powder for food; and maltose starch syrup. That is, since the Glycine max (L.) is **NOT** a lotus root, Kung-Ming does not teach the lotus extract powder. Further, Kung-Ming does not teach the mixture used in the present invention. In addition, Kung-Ming does not teach any effectiveness relating to treatment of allergy. Accordingly, Kung-Ming does not anticipate new claims 16-21.

In view of the remarks above and amendments made herein, applicants maintain that claims 16-21 are novel over the cited prior art and accordingly, these grounds of rejection under 35 U.S.C. 102 should be withdrawn.

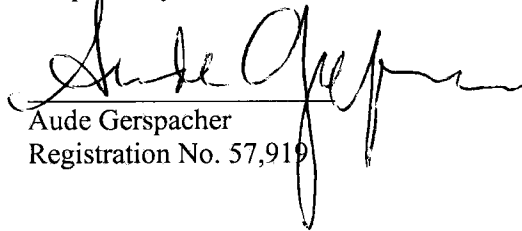
Double Patenting Rejection

The Examiner provisionally rejected claim 1 under the doctrine of nonstatutory double patenting over copending application 10/565,039.

In response, applicants note that this rejection is provisional and therefore may be revisited should the claims of US 10/565,039 be deemed allowable. Applicants further note that when claims 16-21 are found allowable, this provisional rejection should be withdrawn.

Reconsideration and allowance of all the claims herein are respectfully requested.

Respectfully submitted,



Aude Gerspacher
Registration No. 57,919

December 23, 2009

Cozen O'Connor
250 Park Avenue
New York, New York 10177-0030
Telephone: 212.986.1116
Facsimile: 212.986.0604